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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

NO. 618

JAMES H. QUARLES, *Petitioner*

v.

THE STATE BAR OF TEXAS, ET AL., *Respondents*

PETITION FOR A WRIT OF CERTIORARI
To the 133rd Judicial District Court of Harris County, Texas

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James H. Quarles, Petitioner, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Texas entered in the above-entitled case on August 16, 1961. The record in this case, however, is in the said 133rd Judicial District Court of Harris County, Texas, as will appear hereinafter.

Citation to Opinions Below

The judgment of the trial court is unreported and is printed in Appendix A hereto, *infra*, p. 9. The judg-

ment of the Supreme Court of Texas is unreported and printed in Appendix A hereto, *infra*, p. 12.

Jurisdiction

The judgment of the Supreme Court of Texas was entered on August 16, 1961. Upon application duly filed therefor, Justice Hugo L. Black of this court ordered on November 4, 1961, that the time for filing this petition for writ of certiorari be extended to and including December 20, 1961. Jurisdiction of this Court is invoked under 28 *U.S.C.*, §1257(3).

Questions Presented

(1) Whether the State Bar Association, its agents and attorneys, organizationally or individually, may be as complainant judicially exempted from the State Statute (and prior decisions) requiring explicitly that jurisdiction in contempt proceedings *must* commence *with a sworn complaint*, as for the perpetration of a crime, without violating the Due Process Clause of the 14th Amendment to the United States Constitution.

(2) Whether the First Amendment to the United States Constitution, as made applicable to the States by the 14th Amendment to the United States Constitution, as here applied to the petitioner, prevents the state judiciary from enjoining petitioner from "soliciting employment within the State of Texas . . . for the presentation, handling and prosecution of a claim and law suit against other parties involved in an accident."

(3) Whether the evidence in the case, essentially criminal in nature, was sufficient to establish beyond a reasonable doubt that Petitioner unlawfully solicited employment

within the State of Texas for litigation against other parties involved in an accident.

Statutory and Constitutional Provisions Involved

Rule 692 of the *Texas Rules of Civil Procedure* provides in relevant part:

> "In case of such disobedience (of an injunction), the complainant, his agent or attorney, may file in the court in which such injunction is pending or with the judge in vacation, his affidavit stating what person is guilty of such disobedience and describing the acts constituting the same . . ."

United States Constitution, First Amendment:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

United States Constitution, Fourteenth Amendment in pertinent part provides:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case

The State Bar of Texas, an administrative agency of the Judicial Department of the State of Texas, and the Grievance Committee of the State Bar of Texas for the 22nd District, Respondents herein, obtained on the 11th day of February, 1958, from the 133rd Judicial District Court of Harris County, Texas, a judgment (see pp. 7-9 of "Motion for Contempt") generally restraining Petitioner from soliciting accident cases for prosecuting claims against other persons involved in accidents. Thereafter, on the 2nd day of October, 1958, the Court of Civil Appeals of Texas, on an appeal by the Petitioner, entered its judgment reforming the said trial Court's judgment, as set out in Appendix B hereto, *infra*, p. 13. The opinion is more fully reported in 316 S.W. 2d 797.

On or about the 26th day of June, 1961, Respondents moved the trial Court to require Petitioner to show cause why he should not be held in contempt of court for violating the trial Court's injunctive judgment, as reformed. To support said unverified complaint, the Respondents, having taken a nonsuit with respect to four alleged acts of contempt without prejudice, brought forward at the hearing four witnesses to persuade the trial judge that Petitioner was guilty of three acts of contempt. On the 16th day of August, 1961, the trial judge found Petitioner guilty of three acts on contempt and accordingly fined him a total of $300.00 and sentenced him to nine days in the county jail, the maximum possible penalty.

Texas law provides no right of appeal in contempt cases: the only mode of review is by original habeas corpus pro-

ceedings in the Supreme Court of Texas.* Accordingly, an application for the Writ of Habeas Corpus was filed in the Supreme Court of Texas on the 16th day of August, 1961, which was denied en banc in chambers the same day (R. 13), the Court not having undertaken the burden of hearing the evidence taken in the Court below. On the 21st day of August, 1961, Justice Hugo L. Black admitted Petitioner to bail pending timely filing and disposition of this petition and conditioned upon posting of sufficient bail bond to be approved by the trial judge, which was done.

Presentation of Federal Questions in the State Courts

133rd Judicial District Court of Harris County, Texas

Prior to the taking of any testimony, Petitioner objected to the lack of procedural fairness in the failure of the State Bar of Texas, its agent or attorney, to swear—*at least on information and belief*—to its complaint, as specifically required of all complainants by state law. At the conclusion of Respondent's case, Petitioner renewed his objection, and urged further that Respondents failed to establish the allegations of their complaint beyond a reasonable doubt, as is fundamentally exacted in all intrinsically criminal prosecutions. Though the federal basis is not spelled out verbatim, the record as a whole shows by clear intendment that the federal claim and the grounds therefor were brought to the trial Court's attention with

* "The only remedy to review a contempt proceeding and the judgment therein is by a collateral attack by a writ of habeas corpus when the relator is in custody." 12 Texas Jurisprudence (2nd), §59, p. 536.

fair precision. *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67.

Supreme Court of Texas

Paragraph 3(c) of the Application for Writ of Habeas Corpus explicitly alleges violation of the Due Process Clause of the 14th Amendment to the United States Constitution (R. p. 2). Also urged in Paragraphs 3(a) and 3(b) thereof were the identical grounds raised both in the trial court and in this Court.

Reasons For Granting Writ

1. The facts of this case present novel questions regarding the extent to which a person may speak and act without practicing law or commiting barratry. Settlement of these questions by the Court is plainly in the public interest. Freedom of expression, traditionally considered as a paramount value, is here denied because such speech concerned Petitioner's lay valuation of potential personal injury suits, a matter of immediate interest to any injured party, the class of people Petitioner does business with normally.

2. This Court should decide in the public interest whether the State Bar Association, no ordinary litigant in the courts of its state, when its agents or attorneys seek to institute quasi-criminal contempt proceedings against those accused of violating an injunction against barratry, should be permitted to be exempt from, or above, the law requiring verification of such complaints by affidavit, as state statute exacts specifically of all such complainants. If this were not to be done, there is real, not remote or theoretical, danger of abuse by those (relatively few) lawyers on a grievance committee in

filing quasi-criminal charges against all those—lawyers or laymen—whose litigious activities were adverse to their own interests. Requisite affidavits would certainly serve to inhibit such potential abuse of otherwise immune prosecuting authority, as they have historically served in criminal complaints.

3. Testimony in this case does not disclose proof beyond a reasonable doubt that Petitioner actually did commit barratry. *All four* complainant witnesses stated that Petitioner did *not* force any of them to seek legal services (S.F. pp. 25, 37, 38, 51, 53, 54, 66, 67). On cross-examination, (1) the witness Byers said that Petitioner did *not* advise him as to his legal rights (27), that he, Petitioner, was an accident investigator and could do the foot work, and that he was not a lawyer; (2) the witness Mrs. Byers stated that Petitioner said he was only an investigator, not a lawyer, and as to legal rights she should consult a lawyer (38), that Petitioner said he would investigate the facts of the accident and deliver statements to her from witnesses thereto (37). (3) the witness Hennech stated that Petitioner never gave him legal advice (51), did *not* suggest litigation (53) or recommend any attorney (53-4), but said that he was only an investigator (54); (4) the witness Odom testified that Petitioner said he was not a lawyer, would not represent him in court, and did not attempt to force him to obtain a lawyer (66); the only "legal advice" Petitioner gave him was ". . . He told me that I was entitled to all I could get, all that stuff," (67), but Petitioner didn't tell him anything that wasn't a matter of common knowledge.

It follows that, with such evidence as this, the Respondents could not possibly prove barratry on the part

of Petitioner beyond a reasonable doubt, so as to justify imposition of penal sanctions.*

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Attorney for Petitioner

BEN G. LEVY
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Houston 2, Texas
Of Counsel

Certificate

Two copies of the foregoing petition for writ of certiorari have this day been served on Hon. William H. Vaughan, Jr., of Fulbright, Crooker, Freeman, Bates & Jaworski, 8th Floor, Bank of the Southwest Building, Houston 2, Texas, this 18th day of December, 1961.

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* "Appellees do not contend, and we do not hold, that there is anything inherently wrong in the investigation business when properly conducted. The investigation of the facts of an accident or other occurrences which have given rise to the assertion of a claim on the filing of a suit does not per se constitute barratry or unauthorized practice of law, whether the investigator is paid a fixed or a contingent fee for services that he has been employed to perform." Quarles v. State Bar of Texas, 316 S.W. 2d 797, 803.

APPENDIX "A"

NO. 488,778 A

STATE BAR OF TEXAS, ET AL.
vs.
JAMES H. QUARLES

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
133rd JUDICIAL DISTRICT

JUDGMENT

On the 14th day of August, 1961, came on to be heard the motion for contempt filed herein by the State Bar of Texas and the Grievance Committee of the State Bar of Texas for the 22nd District, in which motion defendant, James H. Quarles, is charged with contempt of this Court pursuant to affidavits attached to said motion and incorporated therein; and it appearing to the Court that the said James H. Quarles was duly served with a show cause order of this Court and was duly cited to appear herein and show cause on the 14th day of August, 1961 why he should not be punished as for contempt for his conduct in soliciting employment for the presentation, handling and prosecution of the various claims and suits described in said motion and peddling and offering such claims to attorneys and negotiating with attorneys for the handling thereof and seeking to obtain employment in said claims to prosecute and collect the same by means of personal solicitation of such employment; and the said James H. Quarles having appeared on August 14, 1961 in person and by and through his counsel of record, and

the Court having read the motion for contempt and having heard the evidence and argument of counsel thereon; and the plaintiff having withdrawn said motion insofar as the acts of contempt charged in Paragraphs IV, V, IX and X are concerned, and having taken a nonsuit with respect to the acts of contempt charged in said paragraphs of said motion, and the said motion having been dismissed without prejudice insofar as the acts of contempt charged in Paragraphs IV, V, IX and X are concerned, and the Court being of the opinion that the defendant, James H. Quarles, is guilty of contempt of this Court, it is accordingly

ORDERED, ADJUDGED AND DECREED that the said James H. Quarles, is guilty of contempt of this Court by reason of having knowingly and willfully, and without justification or excuse, violated the injunction of this Court entered herein on or about February 11, 1958, as reformed by mandate of the Court of Civil Appeals of Texas in and for the First Supreme Judicial District of Texas, issued on or about October 2, 1958, by soliciting employment within the State of Texas from John H. Hennech for the presentation, handling and prosecution of a claim and law suit against other parties involved in an accident, for which offense the said James H. Quarles is hereby adjudged to pay a fine to the State of Texas of $100.00 and is hereby sentenced to the County Jail of Harris County, Texas, there to be kept and confined for the term of three (3) days;

It is further ORDERED, ADJUDGED AND DECREED that the said James H. Quarles is guilty of contempt of this Court by reason of having knowingly and willfully, and without justification or excuse, violated the injunction of this Court described above, as reformed

by the said Court of Civil Appeals as described above, by soliciting employment within the State of Texas from C. A. Byers and wife, Mrs. C. A. Byers, for the presentation, handling and prosecution of a claim and law suit against other parties involved in an automobile collision, for which offense the said James H. Quarles is hereby adjudged to pay a fine to the State of Texas of $100.00 and for which the said James H. Quarles is hereby sentenced to the County Jail of Harris County, Texas, there to be kept and confined for the term of three (3) days, service of such sentence shall commence immediately after service of sentence herein imposed by reason of solicitation of employment from John H. Hennech and shall be in addition to and cumulative of such sentence;

It is further ORDERED, ADJUDGED AND DECREED that the said James H. Quarles is guilty of contempt of this Court by reason of having knowingly and willfully, and without justification or excuse, violated the injunction of this Court described above, by soliciting employment within the State of Texas from Billie Walter Odom, for the presentation, handling and prosecution of a claim and law suit against other parties involved in an accident, for which offense the said James H. Quarles is hereby adjudged to pay a fine to the State of Texas of $100.00 and for which the said James H. Quarles is hereby sentenced to the County Jail of Harris County, Texas, there to be kept and confined for the term of three (3) days, service of such sentence shall commence immediately after service of sentence herein imposed by reason of solicitation of employment of John H. Hennech and C. A. Byers and wife, Mrs. C. A. Byers, and shall be in addition to and cumulative of such sentences above imposed.

It is further ORDERED, ADJUDGED AND DECREED that commitment may issue to any Sheriff or any Constable within the State of Texas reciting generally the proceedings herein and accompanied by a certified copy of this judgment.

It is further ORDERED, ADJUDGED AND DECREED that all costs of Court herein are hereby taxed against the defendant, James H. Quarles, for which execution may issue.

SIGNED, RENDERED AND ENTERED this 16th day of August, 1961.

/s/ WILMER B. HUNT
JUDGE

IN THE SUPREME COURT OF TEXAS

COURT EN BANC IN CHAMBERS

August 16, 1961.

No. A-8597.

Ex Parte)
James H. Quarles) Original Habeas Corpus.
)

Petition of relator, James H. Quarles, for a writ of habeas corpus, this day filed herein, having been duly considered by the Court, en banc in chambers, it is ordered that said petition be, and hereby is, denied. It is further ordered that relator, James H. Quarles, pay all costs incurred herein.

APPENDIX "B"

FIRST SUPREME JUDICIAL DISTRICT OF TEXAS

The State of Texas,

To the District Court of Harris County, Greeting:

Before our Court of Civil Appeals, on the 2nd day of October, A. D. 1958, the cause upon appeal to revise or reverse your Judgment between

JAMES H. QUARLES, Appellant
From Harris County
No. 13295 vs. Tr. Ct. #488,778
Opinion by Werlein, J.

STATE BAR OF TEXAS AND GRIEVANCE COMMITTEE OF THE STATE BAR OF TEXAS FOR THE 8TH DISTRICT, APPELLEE,

was determined; and therein our said Court of Civil Appeals made its order in these words:

"This cause being an appeal from an order granting a permanent injunction against appellant rendered and entered by the court below on February 11, 1958, came on to be heard on the transcript of the record, and the same being inspected, because it is the opinion of this Court that the sixth (6th) paragraph of the judgment of the court below enjoining appellant is too broad and should be reformed, it is therefore considered, adjudged and ordered that the sixth (6th) paragraph of the judgment of the court below be reformed and changed to read as follows:

"'It is, therefore, ordered, adjudged and decreed by the Court that the Defendant, James H. Quarles, be and he is hereby perpetually enjoined from, and that he shall desist and refrain from, soliciting employment within the State of Texas from parties or

claimants for the presentation, handling and prosecution of claims and lawsuits against other parties involved in accidents or automobile collisions; from holding himself out to the public as being authorized to solicit the payment of claims against other parties and from peddling and offering to attorneys legal business of claimants which he has solicited from injured parties, and from negotiating with attorneys for the handling thereof; from wilfully instigating, exciting, or encouraging the bringing or prosecuting in any court of this State for his own profit of a suit in which he has no interest; from wilfully instigating, exciting, prosecuting or encouraging the bringing or prosecuting for his own profit of any claim in which he has no interest; and from seeking to obtain employment in any claim to prosecute or collect the same by means of personal solicitation of such employment or by procuring another to solicit for him employment in such claim.'

"It is further ordered that the judgment of the trial court, except as hereinabove reformed, be and the same is in all things affirmed.

It is further ordered that the appellant, James H. Quarles, and his surety, The Great American Indemnity Company of New York, pay all costs in this cause incurred. It is further ordered that this decision be certified below for observance."

WHEREFORE, we command you to observe the Order of our Court of Civil Appeals, in this behalf; and in all things to have it duly recognized, obeyed and executed.

WITNESS, the Hon. Spurgeon E. Bell, Chief Justice of our said Court of Civil Appeals, with the Seal thereof annexed, at Houston, this the 5th day of November, A. D. 1958.

ROLA HAMM, Clerk